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EXAMINER

MADSEN, ROBERT A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 10/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/945,318

Applicant(s)

KNIGGE ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2004 and 03 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-17,21,22,24,27-29,32-35,37-39,41-43,45-57 and 59-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-17,21,22,24,27-29,32-34,39,41-43,46-57 and 59-65 is/are rejected.
- 7) ☒ Claim(s) 35,37,38 and 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 3, 2004 has been entered. Claims 1,4-17,21,22,24,27-29,32-35,37-39,41-43,45-57,59-65 remain pending in the application.

### ***Claim Objections***

2. Claims 35,37, and 38 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.
3. Claim 1 recites "a frangible non-free flowing puffed cereal based material with a water activity between 0.2 and 0.4". Claim 34 recites this frangible material comprises two portions, one particulate, and one non-particulate, both separately packaged. Claim 35,37,38 recite the various water activity values for a non-particulate portion. One could infringe on claim 35,37, and 38, and not infringe on claim 1, since claim 1 requires a frangible cereal based material water activity of 0.2-0.4, but claims 35,37, and 38 recite the separately contained on-particulate portion portions has a water activity value at

*least about 0.1* different from a particulate portion and one portion has water activity value outside of the recited range in claim 1. For example, a particulate portion with a water activity of 0.4 and non-particulate portion of 0.6 one would infringe on claims 35,37 and 38, but not infringe on claim1 because the cereal based material, both particulate and non-particulate, must have a water activity value of 0.2-0.4.

4. Claim 45 is objected to because of the following informalities: Claim 45 depends from cancelled claim 44. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1,4-17,21,22,24,27-29,32-35,37-39,41-43,45-57,59-65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

7. Regarding claim 1, there are two new limitations that fail to comply with written description.

8. The first limitation of Claim1 that fails to comply with the written description is "non-free flowing". The Examiner cannot find any support for the "non-free flowing"

limitation or any mention of the flow properties of the cereal based material. Applicant asserts that puffed cereal based material is non-free flowing material, unlike the free-flowing cereal of Beer ( Pages 14 and 15 of the Remarks filed June 4,2004). Beer teaches a bag for free flowing materials such as coffee and cereal. The Applicant discloses "A process utilized in the coffee industry as is disclosed in U.S. 5,352,466, incorporated herein by reference, may also be modified to package cereal according to the present invention." Thus, the specification, like Beer, discloses the packaging method of coffee and the cereal of the present invention are similar. The specification does not distinguish between the process utilized to package free flowing coffee and non-free flowing cereal based material.

9. Additionally, Applicant asserts that the disclosed puffed cereal based material is *inherently* non-free flowing material ( Pages 14 and 15 of the Remarks filed June 4,2004). However, Fogel (US 4517210) teaches a cereal flake or *puffed* cereal based material including a water activity of 0.4 that *is* free flowing (note Column 2, lines 34-53, Column 4, lines 8-11,20-29, Examples 12-15 in the Table). Foster et al. (US 225336) also teaches puffed cereal flakes and describes them as "fluid material" (See Column 1, lines 1-16). Thus the assertion that puffed cereal based material is *inherently* non-free flowing is neither supported by the specification nor the prior art.

10. Furthermore, it appears that Claim 31 contradicts the "non-free flowing" limitation. It is notoriously well known that the "flowability" of particulate matter may be expressed as the angle of repose, which is affected by particle shape and surface moisture. Claim 31 recites spherical shaped puffed pieces, and claim 1 recites the low water activity of

0.2-0.4. One of ordinary skill in the art would *expect* a spherical shape with low surface moisture to be “free flowing” material, based on the properties that affect angle of repose. There is nothing in the specification to suggest why or how a spherical particulate with a relatively dry surface is not free flowing. The prior art clearly contradicts Applicant’s assertion that puffed cereal based material is *inherently* non-free flowing, and since the specification lacks support for such an assertion and fails to define “non-free flowing”, claim 1 lacks enablement .

11. The second limitation of Claim 1 that fails to comply with the written description is the water activity value of 0.2-0.4. As presented originally filed in the claims, as well as in the specification, the water activity is specified *only* in the embodiment shown in Figures 29-30 wherein the cereal based product *comprises* both a particulate portion with said water activity value and a non-particulate portion of no greater than 0.7 ,or about 0.6, wherein the difference between the two portion is at least 0.1. The specification does not indicate which of the disclosed cereal based items (e.g. cereal based items comprising marbits as recited in claim 24 or snack chips in claim 29) are considered “particulate” and which are considered “non-particulate”, or which of these items might have such a water activity value. Additionally, if the portions are held in different compartments of the bag as recited in claim 34, it is unclear , based on the specification, if it is the intention that the non-particulate portion shares the same water activity as the particulate portion since claim 1 recites a frangible non-free flowing puffed cereal based material with a water activity between 0.2 and 0.4.

12. For examination purposes only, any puffed cereal based material will be considered "non-free flowing" and water activity value 0.2-0.4 will be considered enabled by the specification.

13. Regarding claim 34, the specification does not provide support for both a particulate and non-particulate portion having a water activity of 0.2-0.4. Claim 1 recites "a frangible non-free flowing puffed cereal based material with a water activity between 0.2 and 0.4", and claim 34 recites the frangible material has a non particulate and particulate portions in separate compartments. The specification states these components have a different water activity and are separated to prevent mold. If they have similar water activities, as implied by the claim 34 in light of claim 1, there would be no mold risk. For examination purposes only, it will be understood the frangible material comprises a particulate and non-particulate portion, wherein the particulate portion is the non-free flowing puffed cereal based material with a water activity between 0.2 and 0.4.

***Claim Rejections - 35 USC § 103***

14. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

15. Claims 1, 9,10,12,15,16,41,43,59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sirohi et al. (US 6773734 B2) in view of Francis and Lusas et al. (US 5296253).

Art Unit: 1761

16. Regarding claims 1, 9,10, 12,15,16,41,43,59-61, Sirohi et al. teach a food bar that is based on puffed corn, wheat, oat or whole rice grain as recited in claim 16, and as a puffed cereal based product is non free flowing as recited in claim 1, has a water activity of 0.2-0.4, and is sealed in a package of with a moisture barrier and oxygen barrier (i.e. protection against humidity such as film with aluminum foil, which is an impermeable oxygen material with no greater than 0.013cc/100 sqin/day as recited in claims 59-61 and would result in an opaque bag as recited in claim 10). Siroh et al. also teach it is desired to prolong the self-life of the food bar and that the bar may be in any shape such as a star or bear. See Column 2, lines 20-30,50-56, Column 3, lines Column 3, lines 1-21, Column 4, lines 55-63, and Column 5, lines 5-10. However, Sirohi et al. are silent in teaching the package is a vacuum sealed transparent laminate bag with a closure, having less than 1ppm hexanal, that has a textured exterior portion as recited in claims 1, 9,12,32,41, and that the food has a crush resistance of greater than 7 psi or 14.7-100 psi as recited in claims 1 ,15,43.

17. With respect to the particular crush resistance, Francis is relied on as evidence of that the crush resistance of a puffed cornmeal product is greater than 7 psi and depends on the density of the puffed material in the moisture range taught by Sirohi et al. (See Column 1, page 2624 in view of Figure 14) , and further teaches when flour (as opposed to cornmeal) is used as the cereal portion of the food the crush resistance is 12-25 psi, depending on the flour quality (i.e. 2-4 lb/sqcm for high quality wheat flour or 1.5-2 sqcm for low quality wheat flour), at the Aw taught by Sirohi et al. (See Figure 15). Therefore, to obtain any particular crush resistance value of greater than 7 psi or

Art Unit: 1761

14.7-100 psi as recited in claims 1, 15, 43 would have been an obvious result effective variable of the type of cereal material (e.g. quality of flour) and the extent of puffing (i.e. low vs. high density) selected since Francis teaches the crush strength depends on the flour quality and the density of the puffed product.

18. With respect to having less than 1ppm hexanal and a vacuum-sealed transparent laminate bag with a closure, Lusas also teaches cereal based food bars and prolonging the self-life of the food bar with a light-proof bag having moisture and oxygen barrier bag. However, Lusas further teaches the bag may be either lightproof like the foil bag of Sirohi et al. or have UV protection. Lusas teaches laminated transparent bags that are vacuum-sealed(i.e. and thus has a closure), shrunk around the package and flushed with an inert gas (See Column 5, lines 20-26, Column 10, lines 30-50 and Example 10 in Columns 18 and 19). Therefore, it would have been obvious to modify Sirohi et al. and include a multi laminate transparent bag comprising oxygen and moisture barriers that is vacuum sealed (and thus has a closure) and shrunk around the package (i.e. to provide a textured exterior portion since the food bar may be a star or bear shape, flushed with an inert gas with less than 1ppm hexanal (i.e. there is no oxygen present), since Sirohi et al. teach it is desired to prolong the shelf life of the cereal based food bar with a light-proof oxygen/moisture barrier bag and Lusas teaches either light proof barrier bags or uv-proof barrier bags are acceptable, and further teaches a multi laminate transparent bag comprising oxygen and moisture barriers that is vacuum sealed and shrunk around the package, as well as flushed with an inert gas, will prolong the shelf life of a cereal based food bar .

Art Unit: 1761

19. Claims 5-8,13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sirohi et al. (US 6773734 B2) in view of Francis and Lucas et al. (US 5296253) as applied to claims 1, 9,10,12,15,16,41,43,59-61 above, further in view of Witkowski (US 6594927 B2).

20. Modified Sirohi et al. are silent in teaching any particular location of premiums or coupons for the packaged food bar. Witkowski teaches it notoriously well known and desirable to provide premiums and/or coupons with cereal based products that are packaged in boxes, but that food manufactures have found it difficult to provide such items for products packaged in bags/wrappers with affixing including pressure sensitive labels, preprinted information, on the inside or outside of the package, with a separate compartment as recited in claims 5-8,13-14 (Column 1, lines 16-55, Column 2, line 59 to Column 3, line 10). Witkowski teaches how to provide such features for bag and wrappers in an efficient manner (Column 3, lines 14-42, Column 3, line 54 to Column 4, line 25, Column 4, lines 40-50, Column 7, lines 22 to Column 8, line 40, Column 10, lines 59 to Column 11, line 16) Note the "separate" compartment is understood to be hidden windows within multiple layers of a pouch (Column 17, line 64 to Column 18, line 6 ).

21. Therefore, it would have been obvious to further modify the bags of Sirohi et al. and include premiums or coupons by affixing including pressure sensitive labels, preprinted information, on the inside or outside of the package, or with a separate compartment as recited in claims 5-8,13-14, since Witkowski teaches it notoriously well known and desirable to provide premiums and/or coupons with cereal based products that are packaged in boxes and teaches how providing such features in a much more

efficient way so that products packaged in bags/wrappers may offer the desirable premiums and coupons.

22. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sirohi et al. (US 6773734 B2) in view of Francis and Lucas et al. (US 5296253) as applied to claims 1, 9,10,12,15,16,41,43,59-61 above, further in view of Hellweg et al. (US 5523109).

23. Sirohi et al. teaches oat flour (Column 2, lines 49-53), but is silent in teaching treating oat flour to prevent rancidity in the puffed cereal based product. Hellweg et al. teach treating oat flour to inactivate enzymes, and thus prevent rancidity, in puffed oat flour based products (Abstract, Column 3, lines 35-53). Therefore, it would have been obvious to treat oat flour to prevent rancidity since Hellweg teaches inactivating enzymes in oat flour to prevent rancidity when oat flour is used for puffed cereal based products.

24. <sup>29 32</sup> Claims 1,10,16,,22,27-32, 43,46,47,51-54,59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gausman (US 2956383) in view of Francis and Kraft Foods Inc. (WO9812110).

25. Gausman teaches a bag for packaging fragile items such as potato chips and corn curls that provides a full appearance (Column 1, lines 15-72). However, Gausman is silent in teaching any particular water activity or compression properties of the corn curls as recited in claim 1 or a vacuum sealed opaque bag comprising a laminated

sheet with an oxygen barrier and a moisture barrier, a pressure sensitive or cold seal, a semi rigid portion, an interior structure, flushed with nitrogen, maintain less than 1 ppm Hexanal, and have an oxygen permeability of no greater than 0.013 cc/100 sqin per day in order as recited in claims 1,10,16,,22,27-32, 43,46,47,51-54,59-61.

26. With respect to the particular corn curl properties, Francis teaches corn curls are puffed cereal material (i.e. non-free flowing material). Francis teaches corn curls are not crispy at a water activity of 0.53 and above. Francis teaches the crispness and sensory crunchiness decline with increasing water activity and compression resistance. For puffed corn curls, Francis teaches the crispness is linearly related to the water activity. In light of Figure 12 which shows the relation of crispness versus water activity, it would have been obvious to select a puffed corn curl at least below 0.4 since (1) Francis teaches the relation ship between water activity and crispness is linear, (2) Francis teaches the water activity of 0.53 provides "almost zero" crispness (i.e. at the x-axis of the graph), and (3) linear extrapolation from "crispness=0" to at least attain "slightly crisp" would require a water activity of at least between 0.2-0.4. (pages 2622 and 2623, Figure 12). Francis also teaches puffed cornmeal products have a compressive strength greater than 7 psi (e.g. 2 N/sqmm is 290 psi) depending on the density of the puffed material and the moisture of the material (See Column 1, page 2624 in view of Figure 14). Therefore, it would have been obvious to select a corn curl with a water activity of 0.2-0.4 since Francis teaches this will provide the consumer preferred crispiness. To select a corn curl of compressive strength greater than 7 psi would have been an obvious result effective variable of the particular moisture and

density of the curl since Francis teaches these variables affect the compressing strength of puffed corn-based products.

27. Kraft Foods Inc. teaches a rectangular reclosable vacuum sealed bag for snack chips such as potato crisps that provides an oxygen free environment and a pleasant appearance without wrinkles or blemishes, wherein the bag comprises a single laminated sheet with an oxygen barrier, a moisture barrier, a metal layer (i.e. opaque) ,a pressure sensitive adhesive upper seal, a semi rigid portion (i.e. gusseted) providing an interior structure, and is flushed with nitrogen to protect the product against oxidation, thus maintain less than 1 ppm Hexanal, and the laminate must have an oxygen permeability of no greater than 0.013 cc/100 sqin per day in order to prevent oxidation as recited in claims 1,10,15,16,22,27-32, 43,46,47,51-54,59-61 (Abstract Page 1,5,6,11,12, 17,20,37,43). Therefore, it would have obvious to modify the bag of Gausman and include the a rectangular reclosable vacuum sealed bag that provides an oxygen free environment wherein the bag comprises a single laminated sheet with an oxygen barrier, a moisture barrier, a metal layer (i.e. opaque) ,a pressure sensitive adhesive upper seal, a semi rigid portion (i.e. gusseted) providing an interior structure, and is flushed with nitrogen to protect the product against oxidation, thus maintain less than 1 ppm Hexanal, and the laminate must have an oxygen permeability of no greater than 0.013 cc/100 sqin per day in order to prevent oxidation since Kraft Foods Inc. teaches this will not only provide and a pleasant appearance without wrinkles or blemishes, which would not only meet "full appearance" desired by Gausman, but also provide a good preservation for snack items, such as potato crisps, and Gausman

teaches potato based snack chips and corn curls share the same type of packaging bag.

28. Claims 1, 10, 13, 15, 16, 27, 28, 41-43, 46, 47, 51-61, 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe (US 5024996) in view of Francis and Beer (US 6213645 B1).

29. Ringe teaches an item comprising puffed cereal based material (i.e. non-free flowing), such as puffed whole grain oats or corn, as recited in claim 16 and 43, corn-based breakfast cereal, that is a packaged food. Ringe teaches the cereal has a water activity of 0.1-0.45 and that the cereal is crunchy (Column 2, lines 35-52, Column 3, lines 39-59, Column 4, lines 21-39, Column 8, lines 18-23, Column 9, lines 10-17, and Claims 1, 9, 11) However, Ringe is silent in teaching the puffed cereal-based material has a crush resistance greater than 7.0 psi or between 14.7 and 100psi as recited in claim 15, and the package includes a vacuum sealed rectangular shaped bag with an oxygen and moisture barrier with less than 1 ppm hexanal, as recited in claim 1, wherein the bag is made from an opaque laminated sheet that has an oxygen permeability of no greater than .013 cc/100 sqin per day, with a semi-rigid portion, an interior structure, and a pressure sensitive cold seal, a tin tie, clip or zipper closure as recited in claims 10, 13, 15, 27, 28, 41-43, 46, 47, 51-61, 65.

30. With respect to the particular crush resistance, Francis is relied on as evidence of that the crush resistance of a puffed cornmeal product is greater than 7 psi and depends on the density of the puffed material in the moisture range taught by Ringe

(See Column 1, page 2624 in view of Figure 14) , and further teaches when flour (as opposed to cornmeal) is used as the cereal portion of the food the crush resistance is 12-31 psi, depending on the flour quality (i.e. 2-5 lb/sqcm for high quality wheat flour or 1.5-2.5 sqcm for low quality wheat flour), at the Aw taught by Ringe (See Figure 15). Therefore, to obtain any particular crush resistance value of greater than 7 psi or 14.7-100 psi as recited in claims 1 ,15,43 would have been an obvious result effective variable of the type of cereal material (e.g. quality of flour) and the extent of puffing (i.e. low vs. high density) selected since Francis teaches the crush strength depends on the flour quality and the density of the puffed product.

31. With respect to the particular packaging, Beer teaches a rectangular air-tight, which would provide less than 1ppm hexanal and , vacuum sealed rectangular reclosable bag , made from a single laminated sheet with an oxygen barrier (e.g. foil, which would result in an opaque bag and a permeability of no greater than .013 cc/100 sqin per day), a moisture barrier(e.g. polyethylene), with a semi-rigid portion (i.e. gusseted), an interior structure in the form of a rectangle, sealed with a pressure sensitive cold seal and a tin tie, clip or zipper closure, that is suitable for preserving breakfast cereal in a bag with structural integrity that requires strong enough to withstand mishandling during shipping yet easy to open, as recited in claims 1-3,10,13,15,27,28,41-43,46,47,51-61,65 (Abstract, Column 1, lines 38-45, Column 2, lines 5-9 Column 3, lines 13-40, Column 4, lines 15-67,Column 5, line 7 to Column 6, line 3, Figures 5 and 6). Therefore, it would have been obvious to modify the package of Ringe and use a rectangular air-tight, which would provide less than 1ppm hexanal

and , vacuum sealed rectangular reclosable bag , made from a single laminated sheet with an oxygen barrier (e.g. foil, which would result in an opaque bag and a permeability of no greater than .013 cc/100 sqin per day), a moisture barrier(e.g. polyethylene), with a semi-rigid portion (i.e. gusseted), an interior structure in the form of a rectangle, sealed with a pressure sensitive cold seal and a tin tie, clip or zipper closure, as recited in claims 1-3,10,13,15,27,28,41-43,46,47,51-61,65, since Beer teaches this is a package that is suitable for preserving breakfast cereal in a bag with structurally integrity that requires strong enough to withstand mishandling during shipping yet easy to open.

32. Claims 9,11, 33,34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe (US 5024996) in view of Francis and Beer (US 6213645 B1) as applied to claims 1, 10,13,15,16,27,28,41-43,46,47,51-61,65, further in view of further in view of Galomb ( US 6245367 B1).

33. Regarding claims 9 and 11, modified Ringe is silent in teaching a translucent bag or transparent window. Galomb also teaches packaging breakfast cereal in bags with barrier layers and metal foil layers. However, Galomb further teaches if desired, one may provide translucent walls or even a transparent window to view the product (Abstract, Column 4, lines 15-34). Therefore, it would have been obvious to modify the walls of Ringe to provide a translucent bag or window since Galomb teaches one may provide translucent walls or even a transparent window for a cereal bag if desired.

34. Regarding claims 33,34 modified Ringe is silent in teaching the breakfast cereal bag has two compartments, two different products (one particulate, one non-particulate), wherein the non-particulate has a specific water activity. Galomb teaches packaging breakfast cereals in a two-compartment bag, with a particulate cereal based material in one (e.g. the breakfast material) and a non-particulate item the other (e.g. sugar, which is granular ) for the convenience of eating together (Abstract, Column 8, lines 32-63). Therefore, it would have been obvious to modify Ringe and include a non-particulate product with the cereal since this provides the convenience of eating the both type of products from the bag.

35. Claims 4 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe (US 5024996) in view of Francis and Beer (US 6213645 B1) as applied to claims 1, 10,13,15,16,27,28,41-43,46,47,51-61,65, further in view of Ray (US 370419) .

36. Modified Ringe is silent in teaching an exterior carton. Ray, however, is relied on as evidence of the conventionality of placing a vacuum-sealed bag of cereal in an exterior carton (See Column 1, lines1-35, Column 1 line 49 to column 2, line2, Column 3, lines 1-56, Column 4, lines 59-63, and Column 10-23). Therefore, to place the bag of Ringe into an exterior carton would have been obvious since Ray teaches vacuum-sealed cereal containing bags may be stored in cartons and since breakfast cereals are conventionally stored in cartons this would provide a better physical fit of the Ringe product with other cereal products on a store shelf.

37. Claims 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe (US 5024996) in view of Francis and Beer (US 6213645 B1), further in view of Ray (US 370419) as applied to claims 4 and 48 above, further in view of Ours et al. (US 6062467).

38. Modified Ringe is silent in teaching a perforated area for opening the bag. However, Ours et al, who also teach a rectangular reclosable bag, made from a laminated sheet with an oxygen barrier, a moisture barrier held within a paperboard carton, teaches providing a perforated area in the bag for the convenience of opening and dispensing the breakfast cereal, as well as re-closing ( Column 1, lines 15-31, Column 2, lines 60-64, Column 3, lines 30-40, Column 4, lines 20-28, Column 5, line 38 to column 6, line 48). Therefore, it would have been obvious to further modify Ringe since Ours et al. teach providing a perforated area in the bag near the top when the bag is inside a carton would provide a convenient and reclosable way of dispensing the breakfast cereal.

39. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe (US 5024996) in view of Francis and Beer (US 6213645 B1) as applied to claims 1, 10,13,15,16,27,28,41-43,46,47,51-61,65, further in view of Bendenk et al. (US 3753728).

40. Ringe teaches various flours and soy fiber, but is silent in teaching soy flour. Bendenk et al. teach a method of incorporating soy flour into conventional puffed cereal because it enhances the nutritional value of conventional breakfast cereals (Column 1,

lines 5-25, Column 2, lines 48-68). Therefore, it would have been obvious to modify Ringe and include soy flour since Bendenk et al. teach including soy flour in puffed breakfast cereals enhances the nutritional value of the cereal.

41. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe (US 5024996) in view of Francis and Beer (US 6213645 B1) as applied to claims 1, 10, 13, 15, 16, 27, 28, 41-43, 46, 47, 51-61, 65, further in view of Schwab et al. (US 342635).

42. Ringe is silent in teaching marbits. Schwab et al. teach it is well known to include marbits with cereal packages for a pleasing variety (Column 1, lines 5-34). Therefore, it would have been obvious to further include marbits with the cereal of Ringe since it was known that this is a pleasing variety of cereal.

43. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe (US 5024996) in view of Francis and Beer (US 6213645 B1) as applied to claims 1, 10, 13, 15, 16, 27, 28, 41-43, 46, 47, 51-61, 65, further in view of Bendenk et al. (US 3708308).

44. Ringe teaches any common puff shape is possible (Column 8, lines 17-23), but is silent in teaching spheres or irregular shapes per se. Bendenk et al. '308. conventional puffed breakfast cereal in spheres or flakes shape (Column 1, lines 16-20, Column 4, lines 64-66). Therefore it would have been obvious to select a further puffed pieces in a spheres or irregular flake shape since Ringe teaches common puff shapes,

and Bendenk et al. '308 teach spheres or irregular flake are conventional puffed cereal shapes.

45. Claims 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe (US 5024996) in view of Francis and Beer (US 6213645 B1) as applied to claims 1, 10, 13, 15, 16, 27, 28, 41-43, 46, 47, 51-61, 65, further in view of Miyake et al. (US 5942320).

46. Modified Ringe teaches an oxygen barrier layer and a moisture barrier layer with polyethylene and aluminum foil, but is silent in teaching a *metallized* polymeric composite and PP, PE, PET or PLA as recited in claim 62, oxygen scavengers or antioxidants as recited in claim 63, or layers of aluminum oxide coated polyethylene, polyester, glass or ceramic, and a polyester seal interior of the aluminum oxide coated polyethylene layer as recited in claim 64. Miyake et al. teach barrier composite films for dry foods that have mechanical strength and are good for preservation that include oxygen and moisture barriers, including polyethylene and metallized polymeric layer as moisture barriers. Miyake et al. teach layers of aluminum oxide coated polyethylene, polyester, glass or ceramic, and a polyester seal interior of the aluminum oxide coated polyethylene layer (Column 1, lines 5-13; Column 3, lines 12-22; Column 4, line 40 to Column 5, line 2, Column 5, lines 33-42; Column 10, line 33 to Column 11, line 25, Column 15, lines 49-63, Column 17, lines 25-35). Therefore, it would have been obvious to include a metallized polymeric layer as the moisture barrier and a substrate of polyethylene, in addition to an oxygen barrier, antioxidants, as recited in claim 63, or

even layers of aluminum oxide coated polyethylene, polyester, glass or ceramic, and a polyester seal interior of the aluminum oxide coated polyethylene layer since Miyake et al. teaches these oxygen /moisture barriers film-based food packages will have sufficient mechanical strength and provide good preservation for dry foods.

### ***Response to Arguments***

47. Applicant's arguments filed June 4, 2004 with respect to the rejection of Claims 1-3,5-39,41-43,46,47,51-62,65-67 under 35 U.S.C. 112, first paragraph and second paragraph have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, in light of the Amendment a new ground(s) of rejection is made under 35 USC 112, first paragraph as stated above.

48. Applicant's arguments with respect to the rejections under 35 USC 102 and 35 USC 102 have been considered but are moot in view of the new ground(s) of rejection. It is noted that none the primary references applied in the Office Action mailed February 2, 2004 teaches (1) a puffed cereal based material that is "non-free flowing", as defined by Applicant in the arguments filed June 4, 2004 (directed to Beer on Pages 14 and 15 of the Remarks filed June 4, 2004), and (2) a water activity of 0.2-0.4. Because of these two new limitations, all of the rejections of the claims under 35 U.S.C. 102 and 35 U.S.C. 103 (a) made in the Office Action mailed February 2, 2004 have been withdrawn.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Robert Madsen  
Examiner  
Art Unit 1761



MILTON CANO  
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